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इस भाग में विभिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following bill was introduced on 8-3-2000.

BILL NO. 40 OF 2000

A Bill further to amend the Essential Commodities Act, 1955.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the Essential Commodities (Amendment) Act, 2000.

Short title.

2. In section 2 of the Essential Commodities Act, 1955 (hereinafter referred to as the principal Act),—

Amendment of section 2.

(a) clause (ia) shall be re-numbered as clause (iia), and before clause (iia) as so re-numbered, the following clause shall be inserted, namely:—

(c) after clause (e), the following clause shall be inserted, namely:—

"(f) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.".

Amendment of
section 3.

3. In section 3 of the principal Act,—

(a) in sub-section (2), in clause (j), the following proviso shall be inserted at the end, namely:—

"Provided that where a person authorised under an order issued under this section to make such entry, search, examination or seizure is below the rank of an Executive Magistrate or its equivalent, he shall obtain prior permission of an officer not below the rank of such Magistrate before making such entry, search, examination or seizure.";

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) An order made under this section may provide for certain allowance for difference between physical stock and stock in record of any essential commodity which may occur due to climatic conditions or handling of the essential commodity.".

Amendment of
section 6A.

4. In section 6A of the principal Act, for the proviso to sub-section (2), the following proviso shall be substituted, namely:—

"Provided that, in case of any essential commodity, the retail sale price whereof has been fixed by the Central Government or a State Government under this Act or under any other law for the time being in force and which is being sold through fair price shops, the Collector may, for its equitable distribution and availability at fair prices, order such essential commodity to be sold through fair price shops at the price so fixed.".

Amendment of
section 6C.

5. In section 6C of the principal Act,—

(a) in sub-section (1), for the words "any judicial authority appointed by the State Government concerned and the judicial authority", the words "the State Government concerned and the State Government" shall be substituted;

(b) in sub-section (2), for the words "such judicial authority", the words "the State Government" shall be substituted.

Amendment of
section 7.

6. In section 7 of the principal Act,—

(a) in sub-section (1), in clause (a),—

(i) for sub-clause (i), the following sub-clause shall be substituted, namely:—

"(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year, or with fine which may extend to twenty-five thousand rupees, or with both:

Provided that, if any person convicted of an offence under this sub-clause is again convicted of the same offence, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than three months but which may extend to one year or with fine which may extend to fifty thousand rupees or with both.".

(II) in sub-clause (ii),—

(A) for the words "be liable to fine", the words "be liable to fine which shall not be less than fifty thousand rupees" shall be substituted;

(B) the proviso shall be omitted;

(b) in sub-section (2),—

(i) for the words "be liable to fine", the words "be liable to fine which shall not be less than fifty thousand rupees" shall be substituted;

(ii) the proviso shall be omitted;

(c) in sub-section (2A),—

(i) for the words "be liable to fine", the words "be liable to fine which shall not be less than one lakh rupees" shall be substituted;

(ii) the proviso shall be omitted;

(d) sub-section (2B) shall be omitted.

7. For section 10A of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections for section 10A.

"10A. (1) Notwithstanding anything contained in the Code, every offence punishable under—

Provision as to cognizance and bail.

(a) this Act shall be cognizable;

(b) this Act, except the offence punishable under sub-clause (i) of clause

(a) of sub-section (1) of section 7, shall be non-bailable;

(c) sub-clause (i) of clause (a) of sub-section (1) of section 7, if committed more than once by a person, shall be non-bailable for the second and every subsequent offence.

(2) No person accused of or suspected of the commission of a non-bailable offence under this Act shall be released on bail by any court, without giving the prosecution an opportunity to oppose the application for such release.

Power to arrest.

10AB. Notwithstanding anything contained in the Code, no officer below the rank of sub-inspector of police shall arrest any person accused of committing an offence punishable under this Act.".

8. Section 12 of the principal Act shall be omitted.

Omission of section 12.

9. For section 12A of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections for section 12A.

'12A. (1) The State Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas as may be specified in the notification.

Constitution of Special Courts.

(2) A Special Court shall consist of a single judge who shall be appointed by the High Court upon a request made by the State Government.

Explanation.—In this sub-section, the word "appoint" shall have the meaning given to it in the *Explanation* to section 9 of the Code.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless—

(a) he is qualified for appointment as a Judge of a High Court, or

Offences
triable by
Special Courts.

(b) he has, for a period of not less than one year, been a Sessions Judge or an Additional Sessions Judge.

12AB. (1) Notwithstanding anything contained in the Code,—

(a) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court;

(b) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act or upon a complaint made by an officer of the Central Government or a State Government authorised in this behalf by the Government concerned or any person aggrieved or any recognised consumer association, whether such person is a member of that association or not, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act, with which the accused may, under the Code, be charged at the same trial.

(3) A Special Court may, with a view to obtaining the evidence of any person suspected to have been directly or indirectly concerned in, or privy to, an offence under this Act, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

Power to try
summarily.

12AC. (1) If the Central Government is of opinion that a situation has arisen where, in the interests of production, supply or distribution of any essential commodity or trade or commerce therein and other relevant considerations, it is necessary that the contravention of any order made under section 3 in relation to such essential commodity should be tried summarily, the Central Government may, by notification in the Official Gazette, specify such order to be a special order for purposes of summary trial under this section, and every such notification shall be laid, as soon as may be after it is issued, before both Houses of Parliament:

Provided that—

(a) every such notification issued after the commencement of the Essential Commodities (Amendment) Act, 2000, shall, unless sooner rescinded, cease to operate at the expiration of two years after the publication of such notification in the Official Gazette;

(b) every such notification in force immediately before such commencement shall, unless sooner rescinded, cease to operate at the expiration of two years after such commencement:

Provided further that nothing in the foregoing proviso shall affect any case relating to the contravention of a special order specified in any such notification if proceedings by way of summary trial have commenced before that notification is rescinded or ceases to operate and the provisions of this section shall continue to apply to that case as if that notification has not been rescinded or had not ceased to operate.

(2) Notwithstanding anything contained in the Code, offences relating to contravention of any special order notified under sub-section (1) shall be tried in a summary way and the provisions of sections 262 to 265 (both inclusive) of the Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Special Court to pass a sentence of imprisonment for a term not exceeding two years:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Special Court that the nature of the case is such that a sentence of imprisonment for a term exceeding two years may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in the manner provided by the Code.

(3) When trying an offence under this section, the Special Court may also try an offence other than an offence under this Act, with which the accused may, under the Code be charged at the same trial:

Provided that such other offence is, under any other law for the time being in force, triable in a summary way:

Provided further that in the case of any conviction for such other offence in such trial, it shall not be lawful for the Special Court to pass a sentence of imprisonment for a term exceeding the term provided for conviction in a summary trial under such other law.

12AD. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court.

12AE. Save as otherwise provided in this Act, the provisions of the Code (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.'

Appeal and revision.

Application of Code to proceedings before a Special Court.

Savings.

Ord.
13 of 1998.

10. (1) Anything done or any action taken under the principal Act as amended by the Essential Commodities (Amendment) Ordinance, 1998, which ceased to operate, shall be deemed to have been done or taken under the corresponding provisions of the principal Act as amended by this Act.

Explanation.—For the removal of doubts, it is hereby provided that no act or omission on the part of any person shall be punishable as an offence with enhanced punishment, which would not have been so punishable with such enhanced punishment, if this subsection had not come into force.

(2) If any appeal, application, trial, inquiry or investigation is pending immediately before the commencement of this Act, then, such appeal, application, trial or inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the principal Act as it stood immediately before the commencement of this Act, as if this Act had not come into force.

STATEMENT OF OBJECTS AND REASONS

In order to make the Essential Commodities Act, 1955 more effective against hoarders and blackmarketeers and also in achieving the objectives for which it was enacted, it is proposed to make its provisions more deterrent as under:—

(a) For second and subsequent offences pertaining to clauses (h) and (i) of sub-section (2) of section 3 of the Act, minimum imprisonment of three months is proposed to be prescribed.

(b) It is proposed to prescribe maximum fines of Rs. 25,000 for first offence and Rs. 50,000 for second and subsequent offences pertaining to clauses (h) and (i) of sub-section (2) of section 3 of the Act.

(c) In respect of offences other than those pertaining to clauses (h) and (i) of sub-section (2) of section 3, it is proposed to prescribe minimum fines (in addition to imprisonment) of Rs. 50,000 for first offence and Rs. 1,00,000 for second and subsequent offences.

(d) No court shall have discretionary power to impose less than minimum prescribed imprisonment in case of conviction under the Act.

(e) In case of conviction in summary trial, the maximum imprisonment shall be two years instead of one year as existing under the Act. Summary trial shall not be mandatory so as to enable courts to impose imprisonment up to seven years as provided in the existing provisions of the Act. The Central Government, however, shall retain the enabling power to provide for summary trial in appropriate cases by issuing notification.

(f) No bail shall be granted by the court without giving the prosecution an opportunity to oppose the bail application.

(g) Appeal against order of confiscation passed by Collector shall lie to the State Government instead to the judicial authority.

(h) All offences under the Act shall be cognizable and non-bailable except first offences in respect of clauses (h) and (i) of sub-section (2) of section 3, which are technical in nature. Second and subsequent commission of these technical offences shall be non-bailable.

(i) State Governments shall have power to constitute Special Courts for trial of offences under the Act.

2. In order to minimise the alleged misuse of power by lower field functionaries, it is proposed to provide in the Act as under:—

(i) Prior permission of an officer not below the rank of an Executive Magistrate will be required before making entry, examination or seizure under the order issued under the Act.

(ii) No officer below the rank of sub-inspector of police shall arrest any person accused of committing an offence punishable under the Act.

3. With a view to tackle hardships of the traders when there is a minor variation in stocks, it is proposed that orders made under the Act may provide for certain allowance for difference between physical stock and stock in record of any essential commodity which may occur due to climatic conditions or handling of the essential commodities. This will eliminate traders being booked for minor variations in stock.

4. It is also proposed to provide that certain seized essential commodities may be sold by the Collector through fair price shops at the prices fixed by the Central Government or a State Government. This will eliminate delays in the disposal of such commodities and enable easy availability of essential commodities.

5. In the light of economic changes, automotive components have been delicensed. The automotive components industry is well-developed in the country and the industry is producing a wide range of components adopting the latest technology. A substantial quantity is also being exported. There are no restrictions on their imports. It is, therefore, proposed to delete the item "component parts and accessories of automobiles" from the Act.

6. To achieve the above objectives, the Essential Commodities (Amendment) Bill, 1999 was introduced in the Lok Sabha on 5th March, 1999. With the dissolution of the 12th Lok Sabha, the said Bill lapsed. Now it is proposed to introduce a fresh Bill containing the above proposals.

7. The Bill seeks to achieve the aforesaid objects.

NEW DELHI;

SHANTA KUMAR.

The 21st February, 2000.

FINANCIAL MEMORANDUM

Clause 9 of the Bill seeks to substitute section 12A which provides for constitution of Special Courts by the State Governments for trial of all offences under the Act. The expenditure on such Courts in the Union territories which do not have their own Consolidated Funds will have to be met by the Central Government. As was done for constituting Special Courts under the provisions of the Essential Commodities (Special Provisions) Act, 1981, the existing Sessions or Additional Sessions Courts in the Union territories may be designated as Special Courts to try offences under the Essential Commodities Act, 1955. Therefore, there may be no extra expenditure towards the salary of Judges and supporting staff in the Union territories. However, a token outlay of recurring and non-recurring expenditure respectively of Rs. 4 lakhs and Rs. 2 lakhs only for the first year in respect of the Union territories is anticipated. There will be no other recurring or non-recurring expenditure.

G.C. MALHOTRA,
Secretary-General.